

DECISION



12784 *Feldman Pro H*  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-196618

DATE: February 8, 1980

MATTER OF: Otis Elevator Company

DIGEST:

Bidder having experience maintaining elevators similar but not identical to elevators described in solicitation satisfies solicitation clause requiring bidder to have experience in maintaining "specific type of automatic elevator system" since clause does not explicitly require experience with identical elevator equipment.

CNG 00990

17 - Otis Elevator Company (Otis) protests the award of 3856 a contract to Midstate Elevator Company (Midstate) under invitation for bids (IFB) 2PBO-PF-19481, issued by the General Services Administration (GSA). The IFB requested bids for the award of a full service maintenance contract for eight elevators at the U.S. Courthouse and Federal Building in Syracuse, New York. Otis contends that Midstate is nonresponsible because it does not meet the solicitation's definitive responsibility criterion. For the following reasons, we deny the protest.

The criterion at issue here states:

"Competence of Bidder: \* \* \* The organization must have had a history of competent experience in maintaining the specific type of automatic elevator system as previously described in these specifications, terms and special conditions \* \* \*." (Emphasis supplied.)

When a solicitation contains a restriction on competition which bidders are required to meet, such as a definitive responsibility criterion, a procuring agency

[Protest ALLEGES Awardee Is Nonresponsible]

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must enforce it because 1) other potential bidders might have participated if they knew the agency would waive the restrictive requirement and 2) participating bidders might have bid differently if they knew they faced increased competition which would result from nonenforcement. Haughton Elevator Division, Reliance Electric Company, 55 Comp. Gen. 1051 (1976), 76-1 CPD 294.

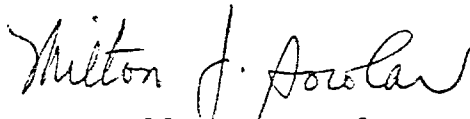
The major issue here concerns exactly what experience is required by the IFB. The protester maintains that the "Competence of Bidder" clause requires that the bidder have experience in maintaining equipment identical to the equipment described in the IFB's schedule. Otis argues that Midstate does not meet the criterion because the elevators serviced by Midstate do not have multiple zoning control systems like the specific elevators referenced in the schedule for servicing. On the other hand, GSA interprets the clause to mean that a bidder must have maintained elevators which are equivalent to but not identical to the elevators at the U.S. Courthouse and Federal Building. Otis contends that this interpretation contravenes the clear meaning of the words "specific type of automatic elevator system" in the "Competence of Bidder" clause.

We do not construe the "Competence of Bidder" clause, as the protester does, to require experience in maintaining elevators with the identical control system as the elevators described in the IFB. The clause does not require experience with the identical control system contained in these elevators; it only requires experience in maintaining "the specific type of automatic elevator system." We believe that a bidder meets an experience requirement like the one at issue here by demonstrating that it has experience in maintaining elevators similar but not necessarily identical to the elevators described in the IFB. See Dover Elevator Company, B-194679, November 8, 1979, 79-2 CPD 339. Even in Haughton, supra, where the IFB required experience in maintaining "the specified equipment" and the equipment description indicated the control system, we recognized that experience in maintaining elevators

of equal or greater complexity might satisfy the IFB's experience requirement. Haughton, supra, at 1056-1058. (Of course, even where the IFB clearly specifies that a bidder must have experience in maintaining equipment identical to that described in the schedule, the procuring agency must be sure that such a requirement meets its needs and is in the best interest of the Government. Haughton, supra at 1058.)

Here, Midstate indicated to the contracting officer that it had maintained elevators at the VA Hospital in Syracuse which are similar in complexity to those elevators described in the schedule. According to the contracting officer and other agency elevator personnel, the elevators at the VA Hospital are manufactured by Otis, are gearless, variable voltage type with selective collective operation (control system) and are arranged to have at least four elevators in a bank. According to GSA elevator personnel, the elevator system at the VA Hospital and its control system are of the same complexity as the systems at the U.S. Courthouse and Federal Building. Based on this record, we believe the contracting officer reasonably determined that Midstate possessed the specified experience.

The protest is denied.



FOR THE Comptroller General  
of the United States